INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statement	2
Argument	5
Conclusion	10

CITATIONS

Cases:	
Celebrezze v. *Sparks*, 342 F. 2d 286	6, 9
In re Chopak, 43 F. Supp. 106	8
In re Debbins, 53 F. 2d 1018	8
Folsom v. *McDonald*, 237 F. 2d 380	6
In re Gilbert, 276 U.S. 6 and 294	8
In re Hoy's Claim, 93 F. Supp. 265	6
Kline v. *Burke Construction Co.*, 260 U.S. 226	8
Theard v. *United States*, 354 U.S. 278	8
Statutes:	
Social Security Act (42 U.S.C. 405 *et seq.*):	
42 U.S.C. 405(g)	2, 5
42 U.S.C. 405(h)	5
42 U.S.C. 405 (i), (j), (k)	6
42 U.S.C. 407	7
42 U.S.C. 416(i)	2
42 U.S.C. 423	2
Social Security Amendments of 1965, Section 332, 79 Stat. 286, 403 (42 U.S.C. (Supp. I) 406 *et seq.*):	
42 U.S.C. (Supp. I) 406	5
42 U.S.C. (Supp. I) 406(b)	6, 9
28 U.S.C. 1292(b)	4
28 U.S.C. 2283	8

281-652—67

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 731

CLAY S. CROUSE, PETITIONER

v.

JOHN W. GARDNER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the United States District Court for the Southern District of West Virginia (Pet. App. 42–47) is unreported. The *per curiam* opinion of the court of appeals (Pet. App. 54–55) is also unreported.

JURISDICTION

The decision of the court of appeals was rendered on July 18, 1967. The petition for a writ of certiorari was filed on October 16, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the district court lacked jurisdiction to fix the amount of an attorney's fee for services performed solely before that court in a Social Security Act case where (1) judgment had been rendered for the claimant and the Secretary had already paid out the accrued benefits, and (2) the attorney had instituted an action in a State court to recover a fee based on an alleged contractual arrangement with the claimant.

STATEMENT

Petitioner is an attorney and a member of the bar of the United States District Court for the Southern District of West Virginia. On February 3, 1961, petitioner filed an action in that court on behalf of one Clarence Hamilton pursuant to Section 205(g) of the Social Security Act (42 U.S.C. 405(g)). That action sought review of the denial to Hamilton by the Secretary of Health, Education, and Welfare of a claimed period of disability, together with disability insurance benefits for that period, as provided for under Sections 216(i) and 223 of the Act (42 U.S.C. 416(i) and 423) (Pet. App. 42). The district court, on April 19, 1963, reversed the Secretary's determination and directed the award of the claimed period of disability and the accompanying disability benefits (Pet. App. 42). No petition for an attorney's fee was filed with the district court, nor was that court apprised of any private arrangement regarding fees entered into by the attorney with his client.

Shortly thereafter, on July 10, 1963, petitioner instituted suit in the Circuit Court of Raleigh County,

West Virginia, against the claimant Hamilton and his infant children to recover from them $6,070.00, pursuant to an alleged contingent-fee contract under which petitioner was to receive 50 percent of the accrued Social Security benefits paid to them as a result of the judgment of the United States District Court. Pursuant to that action, petitioner attached over $6,000 of funds of the Hamilton children on deposit in a State bank (Pet. App. 43).

The claimant Hamilton retained a lawyer to defend the action brought against him by his former attorney for such fees. On April 21, 1964, the State court directed a verdict against Hamilton for the sum of $3,291.00, or 50 percent of accrued Social Security benefits paid to him individually, and reserved its ruling with respect to a recovery from Hamilton's infant children (Pet. App. 43).

A week later the district court, upon hearing of this proceeding in the State court, ordered petitioner to appear before it on May 14, 1964, and show cause why he should not be enjoined from collecting the fee obtained in the State court action, from enforcing either the judgment or attachment obtained by State process, and from taking further steps toward collecting fees for his representation of Hamilton in the district court until such were approved by that court. That order was premised on the view that the funds petitioner was seeking to recover "represented a disbursement of federal funds to carry out the purposes of the Social Security Administration and rested under the exclusive jurisdiction of [the District] Court," (Pet. App. 27). In addition, the court indicated that it had jurisdiction to regulate the fees charged by attorneys

practicing in Social Security cases before it, and that the contractual arrangement petitioner was seeking to enforce was "unreasonable on its face and * * * contrary to the purposes of the Social Security Act and the administration thereof" (*ibid.*).

Petitioner then filed a motion to dismiss for lack of jurisdiction, (Pet. App. 31). After a hearing, the district court, on October 25, 1965, issued a memorandum opinion, concluding that the motion to dismiss should be denied (Pet. App. 42–47). The court determined that its jurisdiction to review Social Security Act cases included the power to prescribe a reasonable attorney's fee for services rendered in such cases. In addition, the court ruled that its jurisdiction to regulate the fees which attorneys could collect in Social Security Act cases rested on its authority over the professional conduct of its officers, and stated that no contest of jurisdiction between the State and federal courts was involved.[1]

After a further hearing, and upon consideration of the services performed by petitioner for Hamilton in the district court action for Social Security benefits,[2]

[1] Petitioner's motion for a certification for an interlocutory appeal pursuant to 28 U.S.C. 1292(b) was denied by the district court; a petition to the Court of Appeals for the Fourth Circuit for a writ of prohibition was also denied by that court (Pet. App. 48–49).

[2] That action, the district court pointed out, "did not proceed beyond the district court level and was a routine review challenging the action of the Secretary * * * in denying Social Security benefits * * * and * * * presented no undue or unique problems for counsel * * *" (Pet. App. 52). Earlier the court had informally noted that "Hamilton was not represented by [petitioner] at the administrative level * * *" (Pet. App. 50).

the court ordered an award of $1,645.50[3] to petitioner "in full satisfaction of all services rendered in the case of Clarence Hamilton vs. Celebrezze, Civil Action 264." The court's order further provided that petitioner should remit to Hamilton any amount in excess of the $1,645.50 which petitioner might otherwise obtain by virtue of the State court proceedings (Pet. App. 49–53).

Upon petitioner's appeal,[4] the court of appeals, in a *per curiam* opinion, affirmed the district court's judgment "[f]or reasons sufficiently appearing in the memorandum decision of the District Court" (Pet. App. 54–55).

ARGUMENT

The decision below is plainly correct. No conflict of decisions exists, and the question is not one of general or prospective importance. There is thus no occasion for further review.

1. The district court plainly had authority to award an attorney's fee in this Social Security benefits case; indeed, in our view, its authority over the matter of fees was exclusive.

Congress has provided, in Sections 205(g) and 205(h) of the Social Security Act (42 U.S.C. 405(g) and 405(h)), that the United States district courts

[3] This amount was 25 percent of the accrued Social Security disability benefits paid to the claimant Hamilton, which would have been "the statutory maximum" had Section 206 of the Act (42 U.S.C. (Supp. I) 406), as amended in 1965, been applicable (Pet. App. 50). That provision, although not directly pertinent, was found by the district court to furnish "an appropriate criterion for the fee to be allowed in this proceeding" (*ibid.*).

[4] The Secretary was granted leave by the court of appeals to participate in the proceedings below as appellee.

shall have exclusive jurisdiction to review administrative determinations in Social Security Act cases. That exclusive power of review, even prior to the 1965 amendments to the Act (see *infra*, pp. 9–10), included the authority to award a reasonable attorney's fee out of accrued Social Security benefits recovered in the district court proceedings. *Celebrezze* v. *Sparks*, 342 F. 2d 286 (C.A. 5); *Folsom* v. *McDonald*, 237 F. 2d 380 (C.A. 4).

Since the allowance of such fees relates directly to the funds which are payable on the claim over which Congress has given the district courts exclusive review jurisdiction, authority to award attorneys' fees rested exclusively with the district courts at all times.[5] In short, all matters pertaining to Social Security claims are for the federal courts acting under the federal statute. Compare *In re Hoy's Claim*, 93 F. Supp. 265 (D. Mass.) Moreover, Congress has made it clear that Social Security benefits are to be accorded great protection, by spelling out the procedures under which payments may be made (see, *e.g.*, 42 U.S.C. 405 (i), (j) and (k)), and by immunizing these payments from all collateral process, including, without doubt, process instituted in State courts by attorneys for

[5] That is plainly the law today, since Congress provided in Section 332 of the Social Security Amendments of 1965, 79 Stat. 286, 403, (42 U.S.C. (Supp. I) 406(b)), for the allowance of a limited attorney's fee by the district court in Social Security cases, and prohibited the collection by the attorney of any other fee (see *infra*, pp. 9–10).

fees (42 U.S.C. 407).[6] In light of these considerations, it is clear that the allowance of a fee for petitioner's services in the instant case rested exclusively in the federal district court.

2. There is no merit to petitioner's contention (Pet. 12–13) that the district court's authority over the matter of fees ended when the Secretary paid the claimant his past-due benefits. Rather, the district court's exclusive power to deal with the Social Security benefits litigation continued until that litigation was finally disposed of. Thus, if an attorney chooses to delay judicial review of his fee arrangement with the claimant until after the Secretary has paid the accrued benefits to the claimant, such review must lie at that time.[7] The authorities cited by petitioner (Pet. 10–11), holding that no ancillary jurisdiction existed after entry of judgment, where neither diversity of citizenship nor a federal question was any longer involved, are plainly inapposite here, where all aspects of the subject matter at all times concerned the Social Security Act. In other words, in the instant circumstances there is no escaping the continuing existence of an exclusively

[6] 42 U.S.C. 407 provides in pertinent part that "none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law."

[7] Contrary to petitioner's suggestion (Pet. 13), the district court's power to allow attorney's fees did not rest on the presence of funds in the court. The power of the court to allow a fee rested on its exclusive jurisdiction to review the Social Security benefits claim.

federal question.[6] As to the procedural matter of how petitioner could have invoked the district court's jurisdiction after judgment to determine and award a reasonable fee, petitioner concedes (Pet. 13) that he could have filed a motion to reopen the review proceedings for this purpose (see Pet. App. 34).

Equally without merit is petitioner's attempt to cast the fee proceedings in terms of a conflict between the State and federal courts (Pet. 7–10). The district court neither enjoined the State court action, nor petitioner's prosecution thereof, and 28 U.S.C. 2283 has no bearing on this case. The district court, acting under its inherent powers, disciplined petitioner for what it believed was overreaching by an officer practicing before it in a Social Security case. Discipline in the matter of attorneys' fees is clearly a proper exercise of judicial power. See *In re Gilbert,* 276 U.S. 6 and 294; *In re Chopak,* 43 F. Supp. 106 (E.D.N.Y.); *In re Debbins,* 53 F. 2d 1018 (E.D. Mich.). State and federal courts exercise their disciplinary powers independently. *Theard* v. *United States,* 354 U.S 278, 281. In view of the district court's exclusive mandate from Congress in Social Security matters, and in light of the situation before it, the court's exercise of its inde-

[6] Petitioner clearly errs in asserting that the district court violated rules of comity by proceeding in this case during the pendency of the State court action (Pet. 8–10). Assuming *arguendo* that the State court had jurisdiction over the contract action for fees, both actions being *in personam* could have proceeded simultaneously without doing violence to rules of comity: *Kline* v. *Burke Construction Co.*, 260 U.S. 226, 230. Since, however, jurisdiction rested solely in the district court, the propriety of the court's considering the matter and entering a binding fee order is established *a fortiori.*

pendent disciplinary power here was without question proper.[9]

3. Finally, since the enactment by Congress of specific provisions dealing with attorneys' fees in Social Security cases which are reviewed in a district court, situations like that presented in the instant case are not likely to recur. Under the statute as amended in 1965,[10]

[9] Petitioner attempts to defend his claim for 50 percent of accrued benefits (Pet. 18–20) paid to the claimant Hamilton and his children as being reasonable in amount. The district court and the court of appeals both viewed such a fee in this type of case as plainly excessive. Indeed, Congress has since made it clear that 25 percent of past-due benefits is the maximum to be allowed (42 U.S.C. (Supp. I) 406(b)). The district court, in following the congressional guidelines in the 1965 provisions relating to attorneys' fees (see note 3, *supra*), can scarcely be said to have abused its discretion. Moreover, one of the reasons the courts undertook to decree fees in Social Security cases was to "protect indigent claimants from oppressive and improvident arrangements" (*Celebrezze* v. *Sparks*, 342 F. 2d at 289).

[10] In pertinent part, Section 332 of the 1965 Social Security Amendments, 79 Stat. 286, 403 (42 U.S.C. (Supp. I) 406(b), provides:

> (b)(1) Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment, and the Secretary may, notwithstanding the provision of section 405(i) of this title, certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits. In case of any such judgment, no other fee may be payable or certified for payment for such representation except as provided in this paragraph.
>
> (2) Any attorney who charges, demands, receives, or collects for services rendered in connection with proceedings

the awarding of attorneys' fees in Social Security cases is expressly placed within the exclusive authority of the United States district courts. Such an award may not exceed 25 percent of the amount to which the claimant is entitled, in accrued benefits, under the court's judgment. Violation by attorneys of that provision, by charging or collecting more than the court-prescribed fee, constitutes a misdemeanor. Moreover, provision is made for direct payment by the government of fees awarded by the court to the attorney out of the benefits payable, so that direct and prompt payment of a reasonable fee is now assured. In view of the new statute, this case has no prospective importance.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition should be denied.

ERWIN N. GRISWOLD,
Solicitor General.
EDWIN L. WEISL, Jr.,
Assistant Attorney General.
KATHRYN H. BALDWIN,
WILLIAM KANTER,
Attorneys.

NOVEMBER 1967.

---

before a court to which paragraph (1) of this subsection is applicable any amount in excess of that allowed by the court thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500, or imprisonment for not more than one year, or both.

U.S. GOVERNMENT PRINTING OFFICE: 1967